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Letter dated 30 December 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 19 October 2004 (S/2004/854). The Counter-Terrorism Committee has received the attached fourth report from Kuwait submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Andrey I. Denisov
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

[Original: Arabic and English]

Letter dated 17 December 2004 from the Chargé d'affaires a.i. of the Permanent Mission of Kuwait to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

In reference to your letter dated 20 September 2004, I am pleased to forward the fourth report of the State of Kuwait pursuant to paragraph 6 of Security Council resolution 1373 (2001) (see enclosure).

Enclosure*

[Original: Arabic]

Fourth report of the State of Kuwait submitted in response to the questions raised by the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

Introduction

Based on the belief of the State of Kuwait in the importance of combating international terrorism by means of joint international efforts, and as a reflection of its interest in fully cooperating with the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism, Kuwait has the honour to submit herewith its fourth report on combating international terrorism.

Implementation measures

Criminalization of the financing of terrorism and the effectiveness in the protection of the financial system

1.1. We should like to point out that criminalization of the act of conspiring, as stipulated in article 56 [of the Penal Code], was introduced as a precautionary measure to address cases of conspiring to commit a crime but stopping short of actually committing one, in which conspiring can take place only between two or more persons. However, commencing to commit the crime of financing terrorism is criminalized even in cases where the crime is committed by one person only, in accordance with other articles that criminalize the acts of commencing and conspiring to commit a crime before it is actually committed.[1]

Therefore, criminalizing the financing of terrorism in accordance with the above articles meets the desired objective until the adoption of criminal legislation that criminalizes terrorist activities.

1.2 Article 3, paragraph 6, of Act No. 35 of 2002 on combating money-laundering operations laid down that financial institutions and individuals must fully comply with the ministerial instructions and decisions issued by the competent government authorities. They must also comply with any other instructions or decisions governing money-laundering operations.

The Ministry of Trade and Industry, given its oversight of a large number of establishments, financial and non-financial companies, wishes to strengthen monitoring of their activities to prevent any contravention of ministerial laws and decisions issued in this regard. To this end, the Ministry has taken the following practical steps:

First, the Ministry, through its department for combating money-laundering operations, has instructed a large number of establishments and companies subject

* Annexes are on file with the Secretariat and are available for consultation.

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to its oversight — including investment companies, insurance companies, car-dealers, insurance agents, currency-exchange establishments and jewellery, gold, precious metals and luxury-goods traders — to take the following actions:

1. Verify the identity of their customers based on official documents issued by the competent State authority and retain copies of such documents, whether the customer is an individual or a representative of an entity;

2. Enter all transactions in commercial ledgers and records detailing the following:

(a) The customer's personal data and telephone numbers;

(b) Date and type of transaction (showing nature and value);

3. Retain the day-ledger and books showing such transactions for a minimum duration of 10 years from the date on which the transaction was made; and keep all correspondence, documents and paperwork related to transactions conducted by the company or establishment, whether domestic or foreign, for a period of five years from the date on which the transaction was completed;

4. Refrain from holding any anonymous accounts, accounts under false or symbolic names, or opening any such accounts;

5. Report to the Prosecutor-General's office any suspicious operations that might be connected with money-laundering;

6. Develop and introduce programmes of appropriate work procedures and monitoring systems to combat money-laundering operations; train employees; introduce internal monitoring systems; and revise and develop policies, procedures and measures aiming at combating this phenomenon;

Second, to enforce such measures, the Ministry has issued Ministerial Decree No. 204 of 2004, which requires all investment companies, insurance companies, insurance agents, currency-exchange companies and jewellery and luxury-goods dealers, as well as other financial companies and establishments that do not fall under the supervision of the Central Bank of Kuwait, to take the following actions:

1. When applying for a licence renewal, to submit a certified annual budget showing all financial and non-financial details based on the trader's records and documents;

2. Record all financial and non-financial transactions in their books in accordance with the Trade Act, using a regular accounting method;

3. Record all dealings in ledgers and books in respect of every person, whether an individual or a representative of an entity, who buys, sells, mortgages, or engages in any other financial transaction of a value that exceeds 3,000 Kuwaiti dinars or its equivalent in foreign currency;

4. Reject requests for making deposits, deposits in trust, rental of safe-deposit boxes for deposit or safekeeping of securities or financial documents under false or unknown names, or conducting foreign transactions directly or indirectly.

Article 2 of the decree provides for penalties that could include the closure of the premises for various periods, with the right of the Minister of Trade to revoke the licence and shut down the premises for good in the case of a repeat offence.

Third, these procedures and other steps taken by the Ministry stem from its pr[illegible]nd dedication to the implementation of the provisions of Act No. 35 of 2002 on combating money-laundering, and from the ministerial decrees issued in this regard to the companies and establishments operating under the Ministry's supervision. Such steps are being carried out in the context of domestic efforts to combat any phenomena related to money-laundering.

In this regard, the Ministry affirms that it will work hard to compel establishments and companies functioning under its supervision to operate in accordance with the conditions prescribed by the relevant legal provisions. Offenders will be subject to the applicable procedures. The Ministry is currently conducting inspections of the establishments and companies, and is alerting owners to its instructions in this regard in order to prevent money-laundering or related operations.

1.3. The committee for inspection of charitable work in Kuwait was set up in accordance with Decree No. 2724 of 2003 issued by the Deputy Minister for Social Affairs and Labour on 23 July 2003. The committee is responsible for a number of pivotal tasks relating to the inspection of charitable work in the country. It also monitors and prevents all forms of fund-raising that do not conform to laws and Cabinet decisions. Membership of the committee includes representatives of the Ministry of Social Affairs and Labour, the Ministry of the Interior, the Ministry of Trade and the Municipality of Kuwait. This composition facilitates monitoring activities by each authority within its competence as prescribed by law. Since its inception, the committee has removed more than 70 kioaks that collected donations, boxes of clothes, used devices and second-hand furniture. Paperwork submitted by numerous non-compliant entities has been suspended. The Ministry has also imposed administrative penalties on its staff who were in contravention of the Civil-Sector Labour Act No. 38/1964 and the Foreigners' Residence Act.

1.4. The Ministry of the Interior and the Ministry of Information are in direct contact regarding the monitoring of the collection of monetary donations and the activities of charities. For instance, in collaboration with the Ministry of Information, all forms of media — television, radio and print — have been instructed not to publish any announcements seeking donations without prior approval of the Ministry of Social Affairs. The Information Ministry instructed the entities operating under its supervision to observe this. In the context of coordination with the Central Bank of Kuwait, the latter has introduced the necessary measures to monitor foreign financial transfers made by charitable associations and institutions through local banks. Moreover, any person wishing to publish announcements that seek donations has to visit the Ministry and fill out a form for fund-raising, indicating the details of the project for which donations are sought, the total amount expected, the expected duration of the project and the ways in which such donations may be spent for philanthropic purposes. This system should fulfil the public good resulting from fund-raising; it is in accordance with the Act Governing Permits for Public Fundraising and with Cabinet decisions and ministerial decrees regulating philanthropic work. Upon completion of the application for fund-raising, which must bear the signature and seal of the applicant, the Ministry examines the application and formulates its views regarding its legal, economic and social implications, upon which the appropriate decision is made. The second stage of periodic inspection of philanthropic institutions then commences,

involving inspection of their administrative, technical, organizational and accounting activities.

1.5. The Department of Charitable Associations and Institutions of the Ministry of Social Affairs is responsible for the monitoring, inspection and supervision of all philanthropic activities in the State of Kuwait. This new department, established under Ministerial Decree No. 104 of 5 August 2002, carries out the following duties:

- Receiving applications for registration of charitable associations and institutions, supervising the registration process, following up their activities and authorizing the establishment of branches in accordance with the measures and conditions approved by the Cabinet;
- Evaluating and following up the annual plans of charitable associations and institutions and aiding them in reorganizing such plans, and periodically directing them to the fields and purposes that fulfil the desired objectives in a manner that enhances their positive role in society, in coordination with the competent authorities both within and outside the Ministry;
- Examining the applications made by such bodies to participate in conferences, meetings and activities organized in the country and abroad, and acting on such applications as appropriate;
- Examining and investigating complaints and legal issues raised by these institutions, and action taken to solving them in coordination with the competent authority in the Ministry, and receiving complaints from its own members and commenting on them;
- Overseeing the implementation of laws and regulations governing the activities and programmes of charitable associations and institutions, and, similarly, the implementation of decisions made by the Supreme Commission for Philanthropy;
- Receiving applications for fund-raising for the public good from charitable associations and institutions, and regulating the procedures for issuing fund-raising permits in accordance with the Fundraising Authorization Act and the rules and regulations in force;
- Ensuring the compliance of charitable associations and institutions with the conditions laid down in the Civil-Sector Labour Act and the Foreigners' Residence Act concerning the employment of workers, and not permitting offenders to work;
- Supervising the methods used for collection of funds and financing of philanthropic projects and programmes organized by charitable bodies by identifying the most appropriate methods, in collaboration with the Central Bank and other government financial institutions;
- Supervising the payment of annual support and regulating the accounting procedures of charitable bodies in accordance with the relevant decrees and accounting rules;
- Organizing periodic inspection of charitable associations and institutions to ensure that the administrative, technical, organizational and accounting aspects of their work, as well as their statutes and organizational decisions, accord

with the law governing them, in order to counter any difficulties that may hamper their work;

– Attending meetings of the governing bodies of charitable associations and institutions, supervising the way in which they are conducted and examining the minutes of meetings held by their departments;

– Evaluating the current status of charitable associations and institutions and making proposals to bring about the desired compliance in order to develop and reinforce their positive role in serving the public good;

– Encouraging coordination and exchange of expertise among these bodies in a manner that increases the effectiveness of charitable work and its contribution to the development of society, in coordination with the competent authorities within and outside the Ministry;

– Supervising the follow-up of charitable associations and institutions in the implementation of mechanisms and methods introduced by the Central Bank to monitor foreign financial transfers made by these institutions via local banks, currency-exchange companies and other financial institutions in the country;

– Supervising the compliance of charitable associations and institutions with the requirement to obtain the approval of the Ministry of Social Affairs and Labour, and developing the proposed studies, plans and annual programmes for projects and services intended to be conducted in the country and abroad, in coordination with the competent authorities within and outside the Ministry;

– Working towards adopting a unified and accurate accounting system across the board for charitable bodies in order to examine their income and expenditure, and making all relevant details available to the competent authorities with a breakdown of their sources and the ways in which they were spent, both in the country and abroad, in coordination with the competent authorities within and outside the Ministry;

The Ministry conducts its work through the following organs:

1. Department for the affairs and projects of charitable associations and institutions;

2. Department for accounts held by charitable associations and institutions;

3. Department for administrative support.

1.6. The Office of the Prosecutor-General is an organic branch of the judiciary under article 167 of the Kuwaiti Constitution, articles 53 and 54 of the Judiciary Organization Act No. 23 of 1990, as amended, and article 9 of the Kuwaiti Code of Penal Procedure. The Office of the Prosecutor-General is not an intelligence apparatus, and does not engage in detective work or evidence-gathering. Rather, it specializes in examining reports it receives on crimes that fall under its jurisdiction, including money-laundering and the financing of terrorism, committed in contravention of Act No. 35 of 2002 on combating money-laundering operations.

The purpose of reports received by the Financial Investigation Unit of the Central Bank either from the Prosecutor-General's Office or from any other authority is to ensure coordination and collaboration between these two organs. This facilitates the financial-intelligence work of the Financial Investigation Unit,

including receiving and analysing financial information from any source, and referring reports to the Prosecutor-General's Office or other competent authorities working to combat money-laundering, whether in the country or abroad.

The Kuwaiti Financial Investigation Unit works in collaboration with the Prosecutor-General, who is responsible for receiving reports of suspicious operations under Act No. 35 of 2002 on combating money-laundering. In accordance with the memorandum of understanding between the Unit and the Prosecutor-General, the latter must, upon receiving these reports, refer them to the Unit, whose subsequent role is to investigate and gather available data and information and then advise the Prosecutor-General of its technical opinion based on its analysis of such data.

1.7. The Prosecutor-General is responsible for receiving suspicious reports in accordance with Act No. 35 of 2002 and with the instructions of the Central Bank to banks and currency-exchange companies, which must forward to the bank, for its information, copies of reports submitted to the Prosecutor-General.

1.8. Banks, investment companies, currency-exchange companies and investment banks operate under the supervision of the Central Bank of Kuwait, and are therefore subject to the obligations stipulated in Act No. 35 of 2002.

1.9. Since Act No. 35 of 2002 was passed, the Prosecutor-General's Office has received numerous reports on money-laundering and the financing of terrorism, which it has investigated and acted on. There were 22 such reports during the period from 14 July 2002 to 4 December 2004. A number of official establishments and ministries submitted these reports, including the Ministry of Trade and Industry, the Department of Customs, the Central Bank of Kuwait, the Commercial Bank, the Kuwait and Middle East Bank, the National Bank of Kuwait and the Gulf Bank.

1.10. The Prosecutor-General considers it possible to take measures to trace and confiscate belongings and assets used or derived from money-laundering and the financing of terrorism, should such measures be requested by foreign judicial authorities in accordance with judicial-cooperation agreements, or on the basis of reciprocity with friendly States until a judicial ruling is issued.

1.11. Kuwait has acceded to 11 of the 12 conventions that the United Nations requested States to sign or accede to in order to demonstrate their commitment to combating terrorism. These are:

1. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, acceded to in accordance with the decree promulgating Act No. 72/1988;

2. International Convention against the Taking of Hostages, acceded to in accordance with the decree promulgating Act No. 73/1988;

3. Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft (1963), acceded to in accordance with the decree promulgating Act No. 64/1979;

4. Montreal Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (Montreal), acceded to in accordance with the decree promulgating Act No. 71/1988;

5. Convention on the Marking of Plastic Explosives for the Purpose of Identification;

6. The Hague Convention for the Suppression of Unlawful Seizure of Aircraft of 1970, acceded to in accordance with the decree promulgating Act No. 19/1979;

7. Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 1971, acceded to in accordance with the decree promulgating Act No. 64/1979;

8. International Convention for the Suppression of Unlawful Acts against Maritime Navigation of 1988, acceded to in accordance with the decree promulgating Act No. 15/2003;

9. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, acceded to in accordance with the decree promulgating Act No. 16/2003;

10. International Convention for the Suppression of Terrorist Explosive Bombs, acceded to in accordance with the decree promulgating Act No. 27/2004;

11. Convention on the Physical Protection of Nuclear Material, acceded to in accordance with Act No. 12/2004;

12. International Convention for the Suppression of the Financing of Terrorism (1999) (under consideration);

In addition, Kuwait has signed the following regional conventions:

1. Convention of the Organization of the Islamic Conference on Combating International Terrorism (1999) (under consideration);

2. Arab Convention on the Suppression of Terrorism (1998) (under consideration);

3. Gulf Cooperation Council (GCC) Counter-Terrorism Convention, adopted on 4 May 2004 (under consideration).

1.12. The Office of the Prosecutor-General affirms that there is no conflict between these texts because the accepted legal principles of interpretation applied in Kuwaiti criminal legislation stipulate that the provisions of any special act override the provisions of general law if they conflict. This is based on the principle that the special law particularizes the general law. For instance, the provisions of Special Act No. 6 of 1994 on crimes against the safety of aircraft and aviation, which increased the penalties prescribed for such crimes, are those that apply at present instead of article 170 of the Kuwaiti Penal Code, issued by Act No. 16 of 1960, which criminalized those same actions but was overridden by the issuance of this special act.

Effectiveness of international cooperation in criminal matters

1.13 and 1.14. The Prosecutor-General considers the issuance of this special procedural act to be important. However, the principles currently in force, pursuant to the agreements on judicial cooperation and exchange of judicial expertise with

friendly States on condition of reciprocity, fulfil the desired objective of issuing this special act at the present time.

1.15. Article 12 of the Kuwaiti Penal Code clearly stipulates that: "The provisions of this law shall apply also to every Kuwaiti citizen who, outside Kuwait, commits a crime that is punishable under the provisions of this law and of the law in force at the place where this crime was committed."

In compliance with this article, whosoever commits, outside Kuwait, a crime that is punishable under the law in force at the place where it was committed but is not punishable under Kuwaiti law may not be prosecuted if the possibility of his extradition exists, inasmuch as Kuwaiti law does not permit putting him on trial for having committed such crime.

1.16. In the above context of our response to the query under paragraph 1.12, Kuwait has become party to 11 conventions out of a total of 12, reflecting its belief in the importance of supporting international efforts to combat terrorism and eliminate this dangerous phenomenon.

Since the crimes outlined in these conventions are classified as terrorist crimes, these conventions — in accordance with the principles and rules of international law — become domestic law once ratified or acceded to by the State of Kuwait, and must be respected and applied in the context of the Kuwaiti Penal Code. Therefore, these are considered special terrorist crimes, particularly since the State of Kuwait has no special law that criminalizes terrorist activities and defines them in an exhaustive manner.

In the meantime, the identification of political crimes is left to the discretion of the competent authority in the country, especially since the Kuwaiti legislature eliminated the reference in the Penal Code to political crimes that fell under the jurisdiction of special tribunals formed for this purpose. Instead, the legislature listed them as ordinary crimes that are subject to the legislature's view concerning the degree of danger associated with the crime, including terrorism crimes.

Effectiveness of customs, immigration and border control

To maintain effective control on the issuance of identity documents, the Kuwaiti legislature issued Act No. 32 of 1982 on the civil-data system. Article 2 of the act states that the system contains a complete and accurate database of the civil biographical data of all Kuwaitis and non-Kuwaitis present in Kuwait. Every person recorded in the civil-data system is assigned a permanent number known as the civil number. The law mandates that all authorities must note the civil number in all files, records and paperwork relating to individuals they deal with.

The General Authority for Civil Data issues an identity card for each person who is registered in the civil-data system, called the civil card. This card is accepted by governmental and non-governmental authorities as a way of verifying the identity of the holder. The system used for issuing identity documents has been computerized and the contents are considered a state secret; it is not possible to provide the committee or the agencies with information regarding the stored data, in view of the secrecy of this information. The above law permits the provision of an official statement relating to the civil data of individuals only to the individual concerned, or to whomever the individual authorizes for that purpose. In exceptional